

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	
)	
To: Richard L. Sippel		
Chief Administrative Law Judge		

ENFORCEMENT BUREAU'S MOTION TO STRIKE

1. On April 30, 2017 – two business days before the start of the hearing and almost a month after the deadline set forth in the *Prehearing Order* – Lake Broadcasting Inc. (Lake) has submitted additional documents as part of its direct case.¹ For the reasons set forth below, the Acting Chief, Enforcement Bureau, through his attorneys respectfully moves to strike these untimely and prejudicial submissions.

Background

2. On February 28, 2017, the Presiding Judge issued the *Prehearing Order*, scheduling the dates by which the parties were to exchange their affirmative direct case

¹ See Lake Broadcasting Inc.'s Supplement to Lake Broadcasting's Response to Enforcement Bureau's Objections to Lake Broadcasting Direct Case Exhibits, filed Apr. 30, 2017 (Lake's Supplement).

exhibits.² As set forth therein, the parties were required to exchange their affirmative direct case exhibits no later than April 3, 2017.³ On April 3, 2017, Lake submitted its direct case exhibits, which, *inter alia*, included six letters of reference from various “acquaintances and business associates of Mr. Rice.”⁴

3. On April 21, 2017, as directed by the *Prehearing Order*, the Enforcement Bureau (Bureau) submitted its objections to Lake’s direct case exhibits.⁵ Therein, the Bureau objected to the admission of these six letters as hearsay. Specifically, the Bureau argued that Lake did not identify any of the authors of these reference letters as potential witnesses at the hearing, subject to the cross-examination of Bureau counsel. Thus, there was no means by which the Bureau – or the Presiding Judge and his staff – could judge the reliability of their statements. Pursuant to the timing set forth in the *Prehearing Order*, Lake submitted its response to the Bureau’s Objections on Apr. 25, 2017.⁶

4. On April 30, 2017 – two business days before the start of the hearing – Lake submitted a supplemental response to the Bureau’s Objections in which it adds documents to its direct case exhibits.⁷ Specifically, in an apparent attempt to cure the evidentiary deficiencies in the letters it originally submitted, Lake adds declarations from authors of four of the original six letters – Messrs. Sellmeyer, Caran, Berlen and Hoehn. In addition, Lake adds a new letter from John Rau (and a declaration in support of that

² See *Prehearing Order*, FCC 17M-08 (ALJ, rel. Feb. 28, 2017).

³ See *id.* at 1.

⁴ See Lake Direct Case Exhibit 1, Appendix C.

⁵ See Enforcement Bureau Objections To Lake Broadcasting Inc. Direct Case Exhibits, filed Apr. 21, 2017. (Bureau’s Objections).

⁶ See Lake Broadcasting, Inc.’s Responses to Enforcement Bureau’s Objections to Lake’s Direct Case Exhibits, filed Apr. 25, 2017 (Lakes’ Responses). Lake did not raise any of the documents it now includes as part of its Supplement.

⁷ See Lake’s Supplement.

letter) which it did not previously include with its direct case submissions. The Presiding Judge should not allow any of these new documents into the record.

Argument

5. The *Prehearing Order* plainly set a deadline of April 3, 2017 by which the parties were to submit their direct case.⁸ Despite the instructions therein that “[e]ach exhibit...must be accompanied by affidavit or declaration under penalty of perjury of a sponsoring witness,”⁹ Lake did not submit a proper affidavit or declaration in support of the six character letters it submitted as evidence in its direct case on that date. In its Supplement, Lake offers no explanation for this omission.

6. Indeed, it appears that Lake intended to rely solely on assertions that the Bureau had somehow waived its hearsay objections, that these letters “should be admitted into evidence without special foundation or declarations of non-perjury by their authors,”¹⁰ and that Rice’s declaration at the beginning of Lake Direct Case Exhibit 1 “should suffice.”¹¹ It was only after the Bureau pointed out that neither the *Order* nor the prehearing conference transcript on which Lake relied suggested that the Presiding Judge intended to allow such character letters to be admitted as evidence without Lake first meeting basic evidentiary standards,¹² that Lake – without first seeking leave from the Presiding Judge – has now submitted declarations from the authors of these letters.

7. Lake is not a *pro se* party. It is represented by experienced counsel who should be well-aware of the rules of evidence and the Presiding Judge’s prehearing deadlines.

⁸ See *Prehearing Order*, FCC 17M-08, at 1.

⁹ *Id.* at n.1.

¹⁰ Lake’s Responses at 2.

¹¹ *Id.*

Lake should not be allowed to submit new documents at the eleventh hour in an attempt to cure evidentiary deficiencies of its own making.

8. Moreover, these untimely submitted declarations do not cure the fact that the character letters that Lake submitted are out-of-court statements – with no foundation – for the purpose of proving the truth of the matter therein asserted. The author’s last-minute declarations offer no additional evidence of the reliability of these out-of-court statements. As such, they do not in fact cure the evidentiary deficiencies associated with the character letters. The Presiding Judge should therefore strike these declarations.

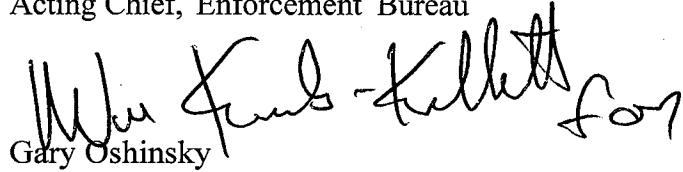
9. In addition, as part of its Supplement, Lake submits a seventh character letter (and a declaration) which it did not include with its original direct case submissions on April 3, 2017. Here again, Lake offers no explanation for its nearly month-long delay in identifying this document as part of its direct case except that it was “inadvertently omitted.” As with the other character letters, this latest submission is hearsay that should be excluded. Lake offers no basis upon which this newly-submitted letter – or indeed, any of the previously submitted six letters – constitute admissible evidence.

10. The Bureau has prepared its case for hearing based on the direct case exhibits Lake submitted on April 3, 2017. It should not now be prejudiced by Lake’s complete disregard of the Presiding Judge’s pre-hearing deadlines. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge strike Lake’s Supplement and the additional documents it adds to its direct case.

¹² See Enforcement Bureau’s Trial Brief, filed Apr. 26, 2017, at n. 32.

Respectfully submitted,

Michael Carowitz
Acting Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary Oshinsky".

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A handwritten signature in black ink, appearing to read "William Knowles-Kellett".

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May 1, 2017

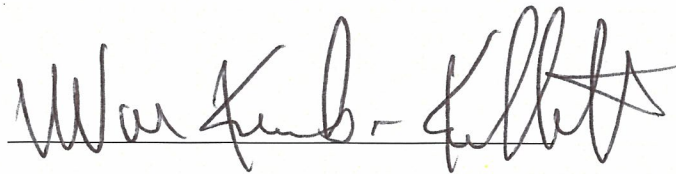
CERTIFICATE OF SERVICE

I, William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certify that on this 1st day of May, 2017, I caused to be sent via First Class United States Mail and via email copies of the foregoing ENFORCEMENT BUREAU'S MOTION TO STRIKE to:

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Counsel for Patrick Sullivan and Lake Broadcasting, Inc.

A copy of the foregoing also was served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, DC 20554

A handwritten signature in black ink, appearing to read "William Knowles-Kellett", written over a horizontal line.